IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.59 OF 2005

IN

SUMMARY SUIT NO.466 OF 2004

Hemlata Harish Bhatia & Anr. ...Plaintiffs

Versus

Vallabhdas Lalchand Dhamanmal

& Ors. ...Defendants

.....

Ms.Pathak i/b M/s.Pathak Associates for Applicants/Plaintiffs.

Mr.Manish Gite i/b Vijaykumar & Co.for Respondent No.1.

.....

CORAM: A.M.KHANWILKAR, J.

AUGUST 16, 2005.

P.C.

1. None for the Applicants. Dismissed for default.

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2. Later on, matter was mentioned after lunch break by Ms.Pathak, Advocate on record for

Applicants, submitting that at the relevant time, she was held up in some other Court. Apology tendered is accepted. Hence, matter restored to the file.

3. Heard Counsel for the parties. Perused the pleadings.

4. In my opinion, proposed amendment in terms of Schedule to the Chamber Summons as prayed for, ought to be granted. This is so because relevant averments are already incorporated in the Plaint as filed, in particular from Paragraphs 12 onwards. Therefore, there is substance in the stand taken on behalf of the Applicants that the relief now claimed by way of proposed amendment have not been mentioned in the Plaint due to inadvertence.

5. To get over this position, Counsel for the Defendants would contend that the case as made out in the Plaint was dealt with by the Defendants in the reply affidavit to the Notice of Motion No.502 of 2004 taken out by the Plaintiffs. However, after pleadings were complete, the Plaintiffs

withdrew the said Notice of Motion on 10th December 2004. It is submitted on behalf of the Defendants that in this backdrop, amendment as prayed ought not to be granted.

6. I see no substance in this objection. The question before me is whether proposed amendment ought to be granted. In my opinion, as mentioned earlier, in the interest of justice, the Applicants are entitled for reliefs claimed in prayer clauses (a) to (c).

7. Chamber Summons accordingly made absolute in terms of prayer clauses (a) to (c). Amendments be carried out within four weeks from today. No order as to costs.

A.M.KHANWILKAR, J.